

1 does not have an interest in her parents' house.

2 Q. I believe we've asked this before, however,
3 only with regard to one of the apartments. On either
4 of the apartments, have you ever seen an appraisal?

5 A. No. I haven't seen an appraisal on either of
6 them.

7 Q. Other than the spreadsheet that you've been
8 mentioning, are there any other documents that you
9 have seen related to this matter since December, 1991?

10 A. Yes. I told you there was a series of
11 contracts or proposed contracts or option agreements
12 between her and Clanton.

13 Q. Other than those?

14 A. She may have shown me very early on -- and
15 this would be in the fall of 1991 -- the capital
16 acquisition budget, and I don't want to put too fine a
17 spin on that. It would have been nothing more than a
18 listing of the items that she would have to acquire to
19 build a radio station from scratch and approximately
20 how much that would cost.

21 Q. And you say she may have shown you that?

22 A. Yes. At one point when I was in New York, I
23 may have seen it when she was working on it. But I
24 know we discussed the \$350,000 figure, and she told me
25 roughly how that was broken down, but it was in a

Federal Communications Commission

Docket No. 93-87 Exhibit No. 2

Presented by CLANTON

Disposition { Identified ✓
Received ✓
Rejected _____

Reporter M.K. FLEISHMAN

Date 1/12/94

1 the checks because she sends me a Federal Express
2 package every day with litigation materials from the
3 cases we're working on, and they will send her the --
4 actually, it's a deposit slip. Funds are deposited in
5 my bank in New York, and a lot of times when that
6 happens, I'll ask her to be alert for the deposit slip
7 so she can tell me what the amount was so I can record
8 it in my books.

9 Q. What does she know about your debts
10 presently?

11 A. She knows what I've told her, which is my
12 only -- well, that's not true. I have one -- I have a
13 bank loan, but other than that my debt is the mortgage
14 on my house. She actually knows my debts as shown on
15 my balance sheet; so she knows what's on the balance
16 sheet.

17 Q. She knows of your debts from what she sees on
18 your balance sheet or sheets?

19 A. Right.

20 Q. Did you show her any other documentation
21 regarding your financial situation prior to December,
22 1991?

23 A. Did you say did I show her any
24 documentation? I don't believe so.

25 Q. After December, 1991, it would be the two

1 financial statements?

2 A. That's correct.

3 MR. DANIELS: Let's, for the record, mark as
4 Exhibit 1 the financial statement of November 30,
5 1991, which Mr. Dailey provided today, and let us mark
6 as Exhibit No. 2 the financial statement of August 27,
7 1993.

8 (The documents referred to were
9 marked Exhibits 1 & 2 for identification
10 by the reporter and attached hereto.)

11 BY MR. DANIELS:

12 Q. Let us elaborate, please, a little more
13 regarding Ms. Selznick's interest in owning a radio
14 station. When did she first discuss with you her
15 interest in owning a radio station?

16 A. Sometime in the spring of 1991.

17 Q. What did she say to you at that time
18 regarding such?

19 A. She told me then that she was thinking of
20 getting back into the radio business and buying a
21 station. I had just moved to California. I still had
22 not formally resigned from the firm. There was a
23 three- or four-month transition period, but I was in
24 California, and I was actively searching for a
25 business myself. I had not acquired RunTime

1 Q. Did she discuss with you whether she would
2 set up a corporation or a partnership for this
3 business venture?

4 A. No.

5 I suggested that she had to focus on that,
6 and that, depending on a variety of different things,
7 she might want to set it up as a limited partnership
8 or a corporation because, again, what she was doing
9 was going through all the sets of issues that I had
10 just gone through when I was purchasing my business,
11 but she had not -- she may have told me how she came
12 out. I don't recall that.

13 Q. During these conversations prior to her
14 filing the application, when she discussed the El Rio
15 frequency with you, did she discuss with you the
16 needed investment for equity for constructing and
17 operating the station?

18 A. Yes. As I said, she had very -- early on she
19 told me first that the license was available, it was a
20 new license, and that she believed that the station
21 could be built from scratch for no more than \$350,000
22 and that that was probably a very conservative figure
23 and that the actual amount might be less than that.

24 Q. What about operating it?

25 A. I believe she -- that \$350,000 may have

1 included some working capital -- I'm not clear on
2 that -- but I know that she believed that she could
3 get it to a positive cash flow probably within a year.

4 Q. Did you feel that that was a bankable deal --
5 strike that question.

6 Did you feel that was a bankable investment?

7 A. Is that -- I didn't have any feelings on that
8 because I didn't know how a banker would value the
9 license by itself and, also, at that point I
10 essentially told her that based on my -- based on
11 everything I had been seeing and reading in the
12 newspaper, banks were very rapidly withdrawing from
13 the business finance market presently because of the
14 savings and loan crisis. And it was that period where
15 the Feds were all over the banks and would not allow
16 them to make business loans on anything other than on
17 a fully secured basis.

18 Q. You said previously that Ms. Selznick did not
19 ask you to loan money related to this venture. How
20 did that come about?

21 A. Shortly after this opportunity came to her
22 attention, she told me she had a series of
23 conversations with a fellow by the name of Derrick
24 Cephas, who was a lawyer -- who used to be a lawyer at
25 Breed, Abbott & Morgan. I knew Derrick very well. He

1 first joined the law firm as a summer associate. He
2 then worked for a couple of years after he graduated
3 from law school, and then he left after Cuomo was
4 elected and he got himself appointed the number two
5 man in the New York banking department. I think he
6 was the deputy superintendent of banks. And then he
7 left and came back to Breed, Abbott as a partner for
8 several years, and then he left again.

9 And I believe at this point, when Loren was
10 talking to him, he had just left Breed, Abbott again.
11 He left shortly before I did, I believe. So I knew
12 Derrick very well, and I knew that she was talking to
13 Derrick and that Derrick had invested in a series of
14 radio stations with a group of investors. And she
15 told me that Derrick would be financing. He was
16 excited by the opportunity, and he and his group would
17 like to provide the financing.

18 And she may have had discussions with him
19 concerning her prior -- her review of other radio
20 stations although I'm not sure; so at some point she
21 kept me posted on her conversations with Derrick. I
22 know that she had at least a couple of meetings in
23 addition to telephone conversations.

24 And then Derrick is very difficult to get
25 hold of. I know because sometimes I've tried. He's

1 one of these fellows who has this terrible schedule,
2 quite frankly, you know, something of a wheeler and
3 dealer at this point, and I know that it was around
4 November of 1991 and Loren was concerned because the
5 deadline for her filing her application was
6 approaching, and she was concerned that she might not
7 be able to get a commitment out of Derrick and his
8 group in time.

9 It was when she mentioned this to me during a
10 telephone conversation, I said, "Well, hell," I said,
11 "I'll provide the financing. I think this is a hell
12 of a deal. It's a much better deal than anything I
13 ever saw." So that occurred during a telephone
14 conversation.

15 There was then at least one or maybe two
16 other telephone conversations shortly thereafter where
17 she called back and she basically said, "Well, you
18 know, are you serious about this?"

19 And I said, "Absolutely." I kept saying, "I
20 think it's a hell of a deal. Don't ask me why the
21 government is doing it. It's giving you this
22 opportunity, but you have it," and "I'll tell you
23 this: " I told her, "It's a hell of a lot safer and a
24 lot less riskier than the business I'm in right now,"
25 which is a computer start-up company. So I said, "You

1 know, listen, I'll be glad to do it."

2 And it was either during that conversation --
3 there may have been a third conversation. In the
4 second conversation I basically confirmed that I was
5 going to do it because the first time I volunteered
6 it. Then she called back and wanted to be sure, you
7 know, I was really serious, and I told her I was. And
8 either that conversation or the following
9 conversation, I remember her asking me that under the
10 -- she had gotten an FCC lawyer, I guess, or she had
11 seen her application, and she needed some assurance
12 that I had the liquid assets to finance the
13 investment.

14 Q. When was this?

15 A. This, as I say, was either the second
16 conversation or the third conversation. There was
17 either two or three conversations. I'm not sure
18 which.

19 Q. Do you have an approximate date?

20 A. Yes, I do have an approximate date, and I
21 know I have an approximate -- I can date them all to
22 about the third week in November, 1991, and I do that
23 based on the conversation we're talking about what my
24 net worth was because part of my net worth was
25 dependent on receiving a check from my former law

1 station did appear to reach Oxnard, and I believe she
2 said that it did.

3 Q. Did you provide Ms. Selznick, at the time we
4 were speaking of, back prior to December, 1991, with
5 any written indication of your willingness to provide
6 the funds for the El Rio station?

7 A. No. She didn't ask for it, and I didn't
8 provide it to her. In fact, I did ask whether a
9 commitment letter was necessary, I believe, and she
10 said it was not. She told me that I would have to
11 provide a balance sheet, that she didn't need it right
12 then, but I would have to provide it. It was then we
13 had -- it was in this part of the conversation where
14 we then, in connection with her question whether my
15 assets were liquid, that we went over my balance
16 sheet. Because I asked her, I said, "Well, what does
17 the commission mean by liquid assets?" because I had
18 known that there were a whole number of different
19 definitions of liquid assets.

20 Q. What did she tell you?

21 A. I'm not so sure that she knew at that point
22 what they were.

23 And I had said, "Listen, let's go over my
24 balance sheet. I've got it right here." And I
25 brought it up in the computer screen, and we went over

1 item by item what would be considered and what would
2 not be considered and, obviously, the cash would be
3 considered liquid. And then there were the amounts
4 owed to me by Breed, Abbott & Morgan, and since those
5 were due to be paid in a relatively short period of
6 time, I said, "I believe those certainly would qualify
7 as liquid."

8 And, you know, between the cash and the
9 amount that was owed by the partnership, we were well
10 over the amount. I mean, we were at -- we were well
11 over \$500,000, which was far in excess. We stopped
12 there. We didn't get into the question of whether my,
13 you know, equity in my house would be considered
14 liquid or not.

15 Q. Did, at the time of this conversation, she
16 bring up your financial statement on her computer?

17 A. She didn't have it on her computer, to my
18 knowledge; it was on my computer.

19 Q. Did this conversation take place with you in
20 California and her in New York?

21 A. Yes.

22 Q. And when did you provide her your financial
23 statement?

24 A. It was relatively recently. I believe it was
25 in August of 1993, around the date of the second

1 financial statement here, August 27, 1993. That was
2 the first time she said she needed it, because when we
3 first discussed it, she said that -- I may have asked
4 her if I should send her a copy of it. Or I'm not
5 sure exactly what I said, but I know I remember very
6 clearly her saying, "I don't need it now but I will."

7 And I said, "Well, you let me know when you
8 need it."

9 Q. So approximately during the time of that
10 August 27 marked Exhibit No. 1 financial statement,
11 that was when you provided the statements to her?

12 A. Yes.

13 Q. Exhibit No. 1 and Exhibit No. 2?

14 A. That's correct.

15 Q. Fine. Did she ask you for anything else in
16 writing prior to December, 1991? Let's strike that
17 question.

18 Did she ask you for anything in writing prior
19 to December, 1991?

20 A. She didn't ask me for anything in writing in
21 December, 1991, and she didn't ask me for anything in
22 writing prior to that time.

23 Q. Did she ask you for anything else in writing
24 after December, 1991?

25 A. Again, you keep saying "else." She never

1 asked me for anything in writing. The only reason I'm
2 saying that is there seems to be some implication that
3 she did ask me for something in writing. The first
4 time she ever asked for a writing was, in the form of
5 a financial statement, was around August, 1993,
6 although I had told her in 1991 that I would give her
7 what she needed.

8 And now, as we're sitting here, I do recall
9 specifically asking her in the conversation we talked
10 about my balance sheet whether she needed a commitment
11 letter, and she told me that she did not.

12 Q. What do you mean by "a commitment letter"?

13 A. I'm using the term that bankers use. It's a
14 formal written commitment by a bank to lend funds, and
15 it's frequently used in deals and transactions where
16 you get a commitment letter from the bank, and based
17 on that commitment letter, you go out and do a deal.

18 And I asked her whether a commitment letter
19 was necessary, and this was in 1991, and she said it
20 was not. It was in the same conversation where she
21 told me that she didn't need my financial statement.

22 Q. I understand. Let's take a short break. Is
23 that okay?

24 A. Yes, absolutely.

25 (Recess from 11:35 to 11:45 a.m.)

1 very good deal." And I again reviewed what I saw as
2 the economics of the transaction -- that you had an
3 opportunity to get in on the ground floor and that
4 your basic security was knowing that the market was
5 pricing these stations substantially higher than their
6 cost, and it made sense. And I confirmed that.

7 Q. And during those two conversations you've
8 just spoken of, did you discuss any of the terms?

9 A. No, we never -- we never discussed the
10 terms. I told her that I would provide the financing.

11 Q. How much was requested?

12 A. Well, at that point she had said \$350,000,
13 \$360,000, one of those two. My recollection is
14 \$350,000. She asked me at some point to sign a
15 declaration in which she said it was 360,000, but it
16 was in that range, but I'm not sure. That was the
17 number we were talking about. But she had previously
18 told me what the cost was to do this, but at this
19 point we had not talked about the financing from me.
20 She was talking about getting financing from Derrick
21 Cephas and his group.

22 And as I said, it's possible, although I'm
23 not sure, because this would have been in October,
24 1991. I know I was in New York several times because
25 we had just gotten a major decision in litigation, and

1 lend to Ms. Selznick?

2 A. You say "prepared." It's my understanding of
3 what she told me that, if her application or her
4 proposed amendment is permitted, which is the way she
5 is going to do the deal, I will lend her \$40,000. She
6 told me that's what she needs.

7 Q. Is there a writing or an agreement
8 memorializing that intent?

9 A. No, except for this deposition, when it's
10 transcribed, and her deposition. She may have said
11 the same thing.

12 Q. When did you -- off the record.

13 (Discussion off the record.)

14 BY MR. DANIELS:

15 Q. When did you first commit to that amount?

16 A. Well, I believe my commitment was subsumed
17 in my earlier commitment to provide \$350,000 in
18 financing, and this, of course, as I said, has been a
19 fairly long history. And then, when Loren said that
20 the amount she was going to need was substantially
21 less and, you know, at some point she told me -- I
22 think it was in July, June or July -- that the amount
23 she would want from me would be \$40,000 and that she
24 was going to put in the balance herself.

25 Q. And is --

1 A. It was in June or July, but I don't consider
2 that a new commitment. I think it's as if somebody
3 goes to a bank for a loan. They say they want
4 \$100,000, but they wind up taking \$50,000. I think
5 that's the situation here.

6 Q. Does this --

7 A. I think I should also add, and it's relevant
8 here, is it was never -- in terms of the exact
9 contours of the loan, the \$350,000 that she said she
10 needed and I said I would finance -- was described as
11 the maximum that was necessary and that it would not
12 be a sum that would be required all at once. It would
13 be a sum that would be required after she got the
14 application -- when and if the application was
15 approved. I think she said going over a one- to
16 two-year period between that point and the time the
17 station finally went on the air that, you know, you
18 would need -- certain expenses would come up sooner
19 than others.

20 Q. By "that point," do you mean to say when she
21 was granted the construction permit?

22 A. Whenever -- well, my agreement was to lend
23 her up to \$350,000. Maybe it was \$360,000 -- my
24 recollection is \$350,000 -- and that the money would
25 be disbursed under that loan beginning at the point

1 when and if she won the -- she was granted the license
2 by the FCC, and that's when the disbursements would
3 begin, and they would continue up until the point when
4 the station was finally on the air, which could have
5 been, you know -- I think she was estimating one to
6 two years. I don't recall exactly but somewhere in
7 that time frame.

8 Q. So are we talking about one to two years of
9 construction of the station?

10 A. I don't know. It wouldn't necessarily be
11 construction of the station but the things that it
12 takes to get a station on the air from the point that
13 you have the license that, you know -- first of all,
14 you have to get a tower, I guess. You have to get a
15 transmitter; you have to get facilities; you have to
16 purchase equipment; you have to hire a staff.

17 And I know that she had that -- a number of
18 people were advising her on this, and I think they
19 had, you know -- estimates of going from the earliest
20 may have been nine months to twelve months, and some
21 of them might have been two years.

22 Q. Did it include any time period after the
23 station went on the air?

24 A. As I say, I am not sure. And I'll be very
25 honest with you, I don't remember whether one of the

1 components in the \$350,000 was for working capital. I
2 do know that one thing that stands out is the \$350,000
3 was probably too high. It probably would not be that
4 high.

5 Q. Let me move on to -- so with regard to the
6 \$40,000 amount we spoke of earlier, was there any
7 writing with regard to that commitment?

8 A. No. As I've told you, there was none.

9 Q. Was there any writing with regard to terms or
10 conditions of that commitment?

11 A. No.

12 Q. Have you spoken to anyone else about the
13 first commitment of the approximately \$350,000 to
14 Ms. Selznick?

15 A. Yes. I spoke to my brother-in-law Terry
16 Mc Nulty about it because he's the fellow in the radio
17 business, and I suggested to him that he may want to
18 bring my dear sister out to California and join the
19 rest of us out here.

20 Q. Did you tell Ms. Selznick about this?

21 A. Yes.

22 Q. And what was her response?

23 A. I think she was enthusiastic because she
24 knows Terry. She has met him on several occasions,
25 and I think she would value very highly his experience

1 in the radio business. I mean, he's done it all.

2 Q. So was it with regard to him coming out and
3 being employed by her?

4 A. Employed, that's right. But I think we were
5 also, as I told her, you know, when she got around to
6 hiring people, that she would want to get somebody who
7 is good and senior and has a lot of experience and
8 that she should be prepared to give them some equity,
9 but it would be as an employee but with some form of
10 equity typical to an employment agreement for a senior
11 person.

12 Q. Would you be interested in -- strike that.
13 Are you considering working for the radio
14 station?

15 A. Good grief, no. I don't work as an employee
16 anywhere, and besides, I don't think my voice would be
17 very good over the air.

18 Q. Would you take on the role as an advisor to
19 her with regard to her investment?

20 A. Oh, absolutely. And depending on how she
21 organized her business. If it should be in a
22 corporate form, I would probably want to be on the
23 board of directors if I provided the financing.

24 MR. DANIELS: I would like to mark as Exhibit 3 a
25 copy of a declaration, a two-page declaration with two

1 pages of attached financial statements, which appear
2 to be identical to Exhibit 1 and 2 financial
3 statements; so this shall be marked Exhibit 3, page 2
4 bearing a signature of Joseph P. Dailey.

5 (The document referred to was marked
6 Exhibit 3 for identification by the reporter
7 and attached hereto.)

8 BY MR. DANIELS:

9 Q. I'm showing you page 2 of the declaration.
10 Is that your declaration, and is that your signature?

11 A. This appears to be a copy of the declaration
12 with my signature on it.

13 Q. Okay. What input did you have into drafting
14 that declaration?

15 A. Virtually none. I was very busy at the
16 time. She called and said that she needed a
17 declaration. And I said, "Draft it up, and I'll read
18 it and sign it." And she did and --

19 Q. By "she," you mean Ms. Selznick?

20 A. Loren Selznick, yes.

21 Q. Okay. Let's look at -- if it's okay, let me
22 take one look at it again, please. I'm referring to
23 paragraph 2.

24 When in December, 1991, did Ms. Selznick
25 apply for the permit? You say, "At the time

1 Ms. Selznick applied for the construction permit in
2 December, 1991."

3 Do you know when Ms. Selznick applied for the
4 permit?

5 A. It's my understanding that she applied for it
6 in December, 1991.

7 Q. Do you know when in December, 1991?

8 A. No.

9 Q. And how did you know the date in December,
10 1991?

11 A. I'm sorry. I don't know the date. Do I say
12 I know the date?

13 Q. Well --

14 A. I don't believe I ever said I know the date.
15 The first clause is setting the approximate time of
16 when I told her I would provide the financing.

17 Q. So did you have any understanding of when she
18 filed for the application?

19 A. My understanding today or my understanding
20 when I signed the declaration or my understanding in
21 1991?

22 Q. When you signed the declaration.

23 A. No.

24 As I said, Loren Selznick drafted this, and I
25 told -- she said that she needed a declaration

1 confirming in writing that I had given -- that I had
2 promised to give her the funds or agreed to give her
3 the funds. And I forget what I was working on. This
4 was August, 1993 --

5 Q. So at the --

6 A. -- but she drafted this, and I'll tell you I
7 gave it a very cursory review. I didn't see anything
8 wrong in it. It appeared to be accurate. I would
9 have said some things differently, but substantively,
10 it was accurate. And I signed it. And any lawyer
11 knows that's how the legal world works. I don't talk
12 this way.

13 Q. In paragraph 2 it says -- well, strike that.

14 You did sign it. Did you understand what you
15 were signing?

16 A. Absolutely.

17 Q. Fine. In paragraph 2 why is the period of
18 three months without revenue mentioned as opposed to
19 some other period?

20 A. Well, looking at this now, as you recall,
21 earlier I said I was not -- I could not remember
22 whether there was a working capital component to the
23 \$350,000 number. She has the exact number down here,
24 \$360,070, and I'm sure that was the number that we
25 spoke of. I had remembered it as 350,000, but it's

1 application regarding an FCC license?

2 A. No. I was not aware that I had to. Did I?

3 Q. I don't know.

4 A. All I thought I was going to do was provide
5 money. I thought that was enough. Maybe I failed the
6 test.

7 Q. No. Let me ask you the next question. In
8 sentence No. 2 of paragraph 2: "At the time, we
9 contemplated that the total cost would be \$360,070."
10 Why do you say "we contemplated"?

11 A. I understand I signed the declaration, but I
12 also told you Loren drafted this, and when she drafted
13 this and sent it to me, I believed this was
14 substantively true. As I say, my recollection was --
15 you had asked me -- without more, my thought was -- my
16 recollection was \$350,000. She said it was \$360,000.
17 And I said, "Well, your memory, I'm sure, is better
18 than mine." And I assumed that she put down this
19 \$360,070 figure from some piece of paper she had. I
20 don't know why she did it.

21 But I certainly at the time did not say, "You
22 can count on it. I'm going to provide you \$360,000,
23 \$360,070." I told her that I would provide the
24 financing. And she had previously told me that it
25 was, again, my recollection is about \$350,000.

1 mentioned -- no, she did not tell me the names because
2 they wouldn't have meant anything to me.

3 There then was a second conversation where a
4 broker told her that the cost of constructing the
5 station, that she could do it for less than \$100,000.
6 The first broker may have said -- I don't know whether
7 the first broker opined on that or not. I think she
8 may have spoken to another broker who said that, "No,
9 it's probably a little more than \$100,000."

10 But it was in connection with that that she
11 reached the decision that she was going to amend her
12 application, and she said now that all she would need
13 from me is \$40,000.

14 And I said, "You got it."

15 Q. How was the figure of \$40,000 reached?

16 A. I don't know. She told me the \$40,000
17 represented the difference between what she had and
18 what she needed to borrow under her revised proposal,
19 and she put that number to me, \$40,000.

20 Q. Did she say she needed \$40,000 or less than
21 \$40,000?

22 A. No. She said it was \$40,000, but, again, it
23 was subject to the same -- it would not be \$40,000
24 immediately, it would be \$40,000 when and if the
25 license was granted and then as the funds were needed.

1 Q. Were there any other terms mentioned at that
2 time?

3 A. At or about this time, she did raise -- she
4 said that the other side, referring to Clanton's
5 lawyers, had raised the question of whether or not it
6 was a legally enforceable promise because there were
7 no specific terms and conditions.

8 And I said, "As far as I'm concerned, that's
9 a lot of baloney. Implicit in this is that they
10 are reasonably commercial terms for a loan of this
11 nature of exactly the type that I, when I had gone out
12 to get financing -- you go to the banks, they are all
13 the same for the financing of a business." And I
14 said, "Those are the implicit terms. And you're
15 roughly talking about 4 to 5 percent above prime.
16 You're talking about a security interest in the hard
17 assets. You're probably talking about some form of
18 five-year note and probably a personal guarantee."

19 And whatever the terms are -- I mean, I was,
20 you know -- this in one sense was a favor, but
21 obviously for my wife and my family, you know, it
22 would be a standard loan. I mean, that was always the
23 position. Whatever she could get from the bank, if a
24 bank was willing, those were the terms.

25 Q. When did you communicate these terms to